

**BEFORE THE APPEALS BOARD
FOR THE
KANSAS DIVISION OF WORKERS COMPENSATION**

RICHARD WALD)	
Claimant)	
VS.)	
)	Docket No. 1,001,322
MOLLE AUTOMOTIVE, INC.)	
Respondent)	
AND)	
)	
UNIVERSAL UNDERWRITERS INSURANCE CO.)	
Insurance Carrier)	

ORDER

Claimant appealed the February 13, 2003 Award entered by Administrative Law Judge Jon L. Frobish. The Board heard oral argument on August 15, 2003.

APPEARANCES

William L. Phalen of Pittsburg, Kansas, appeared for claimant. Clinton D. Collier of Kansas City, Missouri, appeared for respondent and its insurance carrier.

RECORD AND STIPULATIONS

The record considered by the Board and the parties' stipulations are listed in the Award.

ISSUES

This is a claim for an exposure to chemicals in the workplace during the period from November 1999 through August 26, 2001. Claimant alleges that as a result of that chemical exposure he developed a skin disorder, joint swelling, breathing difficulties and other symptoms.

In the February 13, 2003 Award, Judge Frobish determined that claimant had failed to prove that his symptoms were caused by the alleged chemical exposure. Accordingly, the Judge denied claimant's request for benefits.

Claimant contends Judge Frobish erred. Claimant argues that he has proven that his ongoing symptoms were caused by his exposure to paints and solvents at work because those symptoms began shortly after claimant began using a group of new products and his symptoms are consistent with those noted in the related material safety data sheets. In addition, claimant argues that his medical expert witness, Dr. Pedro A. Murati, linked his skin disorder and other symptoms to the chemicals used at respondent's automobile dealership. Accordingly, claimant requests the Board to reverse the February 13, 2003 Award and to grant him benefits for a 24 percent whole body functional impairment for his skin disorder.

Conversely, respondent and its insurance carrier contend the Award should be affirmed. They argue that their medical expert witness, Dr. Christopher A. Moeller, is better qualified to diagnose and to determine the cause of claimant's skin disorder. As Dr. Moeller testified that claimant's skin disorder was not related to the alleged chemical exposure, respondent and its insurance carrier argue that the Judge was correct in finding that claimant had failed to prove that his ongoing symptoms were caused by the work that he performed for respondent.

The principal issue before the Board on this appeal is whether claimant's present skin disorder, joint swelling, breathing difficulties and other related symptoms were caused by a chemical exposure while claimant was working for respondent. If so, what is the nature and extent of claimant's disability?

FINDINGS OF FACT AND CONCLUSIONS OF LAW

After reviewing the entire record and considering the parties' arguments, the Board finds and concludes that the February 13, 2003 Award should be affirmed.

Claimant last worked for respondent in late August 2001, when he quit due to symptoms that he believed were caused by the paints and solvents that respondent began using in approximately November 1999. When claimant's medical expert witness, Dr. Pedro A. Murati, examined claimant in February 2002, claimant's chief complaints were a rash on both hands, legs, feet, arms and shoulders, along with shortness of breath. Dr. Murati, who had been hired by claimant's attorney for purposes of this claim, diagnosed claimant as having dermatitis that was caused by his work for respondent. The doctor rated claimant's skin disorder as creating a 24 percent whole body functional impairment according to the American Medical Ass'n, *Guides to the Evaluation of Permanent Impairment* (4th ed.).

Dr. Murati is board-certified in physical medicine and rehabilitation. The doctor is not an expert in dermatology or chemical exposure cases as he has had no specific

training in those medical fields. Dr. Murati's experience is limited to what he has learned practicing occupational medicine.

But respondent and its insurance carrier hired Dr. Christopher A. Moeller, who is a board-certified dermatologist, to evaluate claimant for this claim. In August 2002, when Dr. Moeller conducted his examination, claimant had a rash on his chest, abdomen, back, arms, legs, groin, buttocks and neck. The doctor diagnosed chronic urticaria (hivelike) with probable angioedema that was probably caused by an autoimmune disease. Contrary to Dr. Murati, Dr. Moeller did not believe that claimant had dermatitis and did not believe that claimant's skin disorder was related to a paint solvent or chemical. Dr. Moeller testified, in part:

Q. (Mr. Phalen) But if the material safety data sheets say these are chronic conditions that may be caused by exposure to this paint solvent or chemical, wouldn't you agree with me that that would make it more likely than not that the diagnosis that you have made would be related?

A. (Dr. Moeller) Well, no. Because -- and the only reason I say that is the presentation that he had when we saw him. More commonly when we see a patient who has been exposed to a chemical or a plant or something, some agent that he is allergic to, his skin, he gets a -- there is a characteristic appearance to the skin, redness, splitting, cracking, weeping, flaking, from the external irritant or allergic reaction. He didn't have that.

He had what we term urticaria plaques. You don't typically see urticaria plaques related to an external exposure. It's theoretically possible, I guess. I haven't seen it in my 16 years. And I am just saying that typically, when really what you are alluding to is a condition we call contact dermatitis, somebody is exposed to a chemical or a plant or something and they break out in a rash. Contact dermatitis has a classic appearance. It is very easy to say this looks like, you know, an external agent is breaking you out.

And we deal with that all the time at a dermatology office. But what he presented with was not a rash that was consistent with that.

Q. It was consistent with someone whose skin had been sensitized?

A. No, no, it was not.

Q. Consistent with someone who had a chronic skin disorder?

A. Possibly related to an autoimmune disease.¹

Dr. Moeller did not attempt to rate claimant's permanent functional impairment once he determined that claimant's skin disorder was probably not related to his work for respondent.

Claimant's request for permanent partial general disability benefits is predicated upon the functional impairment rating that Dr. Murati provided for claimant's dermatitis. The Board, however, agrees with the Judge that Dr. Moeller's greater expertise in dermatology justified adopting his medical opinions over those of Dr. Murati. Accordingly, the Board concludes that claimant has failed to prove that it is more probably true than not that his ongoing skin disorder is related to a chemical exposure while working for respondent. Moreover, the record fails to establish it is more probably true than not that claimant's other symptoms were caused by the work that he performed for respondent. Consequently, claimant's request for benefits should be denied.

AWARD

WHEREFORE, the Board affirms the February 13, 2003 Award entered by Judge Frobish.

IT IS SO ORDERED.

Dated this ____ day of August 2003.

BOARD MEMBER

BOARD MEMBER

BOARD MEMBER

c: William L. Phalen, Attorney for Claimant
Clinton D. Collier, Attorney for Respondent and its Insurance Carrier
Jon L. Frobish, Administrative Law Judge
Paula S. Greathouse, Workers Compensation Director

¹ Moeller Depo. at 31-32.